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In the Supreme Court of the United States

ORIGIN: TERM, 1950-51

UNITED STATES OF AMERICA, PETITIONER

**SAMUEL M. SHANNON, PAUL A. SHANNON AND
W. L. SHANNON**

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
FOURTH CIRCUIT**

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In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 721

UNITED STATES OF AMERICA, PETITIONER

v.

SAMUEL M. SHANNON, PATTI A. SHANNON AND
W. L. SHANNON

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
FOURTH CIRCUIT

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit, entered in the above-entitled case on January 3, 1951.¹

¹The opinion of the court of appeals covers two cases, one of which was instituted under the Tucker Act and the other under the Federal Tort Claims Act. These cases were numbered 6128 and 6129, respectively, in the court of appeals. The Government believes that the judgments of the court below are erroneous in both cases. However, in order to simplify the issue, this petition seeks a writ of certiorari to review only the judgment entered in the Tort Claims Act case, i.e., No. 6129.

OPINIONS BELOW

The district court did not write an opinion. Its findings of fact and conclusions of law appear in the record at pages 26-27.² The majority and dissenting opinions of the court of appeals (R. 39-50) are reported at 186 F. 2d 430.

JURISDICTION

The judgments of the court of appeals, affirming the judgments of the district court, were entered on January 3, 1951 (R. 51, 54). By order of the Chief Justice dated March 21, 1951, the time for filing a petition for writ of certiorari in this cause was extended to May 7, 1951 (R. 56). The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTION PRESENTED

Whether voluntary assignees of claims against the United States for property damage may recover in a suit against the United States, despite non-compliance with the Anti-Assignment Act, 31 U.S.C. 203, by the expedient of joining their assignors as parties defendant or unwilling plaintiffs.³

STATUTE INVOLVED

Section 3477 of the Revised Statutes, as amended, 31 U.S.C. 203, provides as follows:

² A portion of an order, in which the district court discusses its reasons for refusing to dismiss the complaint as being brought in violation of the Anti-Assignment Act, 31 U.S.C. 203, is printed in the record at pp. 18-19.

³ A similar question is presented in the petition for a writ of certiorari in *United States of America v. Jordan*, No. 720, filed together with this petition.

All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. * * *

STATEMENT

The facts in this case may be summarized as follows: In 1943, the United States leased a tract of land from Kathleen P. Boshamer and others as joint owners. Two one-acre plots of land, each containing a frame tenant house, were excepted from the leased tract (R. 27). In April, 1946, Kathleen Boshamer and the other owners entered into a contract with respondents whereby respondents agreed to purchase the tract of land which was the subject of the lease, including the two acres which had never been included in the lease. The sale contract purported to assign to respondents any claims which the vendors had against the United States for any damages caused to the property during the term of the lease (R. 33). Thereafter, the joint owners conveyed the entire property to respondents (R. 10, 27). At the time the sale contract,

which included the assignment of the claims against the United States, was entered into, the damage here involved had already occurred (R. 12, 41).

Respondents, as sole plaintiffs, instituted this action against the United States in the United States District Court for the Eastern District of South Carolina under the Federal Tort Claims Act (now 28 U.S.C. 1346(b)) to recover for the damages caused by the allegedly tortious acts of agents of the United States in destroying the two frame tenant houses which were located on the two one-acre plots that had been excepted from the lease. The former owners of the property, Kathleen Boshamer, *et al.*, were formally named as parties defendant, but the complaint alleged that they were joined as unwilling plaintiffs (R. 20). In their answer, Kathleen Boshamer, *et al.*, filed a disclaimer stating that they had no knowledge as to whether the property had been damaged and for this reason declined to act as parties plaintiff (R. 22-24).

The district court concluded that the assignment was valid and rendered judgment solely in favor of respondents as assignees. The Court of Appeals for the Fourth Circuit affirmed the judgment (R. 54), Judge Soper dissenting (R. 45-50).

REASONS FOR GRANTING THE WRIT

1. The decision of the Court of Appeals that the assignees of a voluntary assignment of claims against the United States are entitled to recover

from the Government on such assigned claims, is plainly at variance with the express command of the Anti-Assignment Act, 3477 R. S., 31 U. S. C. 203, *supra*, pp. 2-3, that assignments of claims against the United States "shall be absolutely null and void" unless made in compliance therewith. The holding of the court below is likewise in conflict with the interpretation of the statute followed and recognized by this Court throughout the life of the statute. This Court has consistently recognized and held that *voluntary* assignments of claims against the United States, as distinguished from assignments by operation of law, are *null and void* unless such assignments comply with the Anti-Assignment Act, or unless the terms of that statute have been properly waived by the Government.⁴ *United States v. Gillis*, 95 U. S. 407, 413-414; *Spofford v. Kirk*, 97 U. S. 484, 488-489; *McKnight v. United States*, 98 U. S. 179, 185, 186; *Bailey v. United States*, 109 U. S. 432, 436-437; *St. Paul Railroad v. United States*, 112 U. S. 733, 736; *Flint and Pere Marquette Railroad Co. v. United States*, 112 U. S. 762; *Freedman's Saving Co. v. Shepherd*, 127 U. S. 494, 505-506; *Hager v. Swayne*, 149 U. S. 242, 247; *Ball v. Halsell*, 161 U. S. 72, 78; *Price v. Forrest*, 173 U. S. 410, 422; *Nutt v. Knut*, 200 U. S. 12, 19-20; *National Bank of Commerce v. Downie*,

⁴ There is, of course, no question that the assignment of the claims pertinent to this petition was not made in compliance with the Anti-Assignment Act; nor were the provisions of that statute waived by the Government with respect to the assignment of the claims here involved.

218 U. S. 345, 351-352; *Western Pacific Railroad Co. v. United States*, 268 U. S. 271, 275; *Martin v. National Surety Co.*, 300 U. S. 588, 594; *McKenzie v. Irving Trust Co.*, 323 U. S. 365, 367; *United States v. Aetna Casualty & Surety Co.*, 338 U. S. 366, 370.⁵

2. Despite their conclusion that the assignees in this case were entitled to recover, the majority of the court below stated in their opinion, "We think it clear that the assignment involved falls within the terms of the anti-assignment statute" (R. 42).⁶ Nevertheless, they affirmed the judgment which had been entered solely in favor of the assignees.⁷

This ruling was apparently founded on the view that the Anti-Assignment Act was not violated because both the assignors and the assignees were before the court and were bound by the judgment, and on the further view that the entry of the judgment in favor of the assignees was justified by the fact that the assignors, who had refused to prose-

⁵ The only exceptions noted by this Court with respect to voluntary assignments of claims made to take effect before allowance are general assignments for the benefit of creditors (*Goodman v. Niblack*, 102 U. S. 556) and transfers by will (*Erwin v. United States*, 97 U. S. 392, 397).

⁶ Since the damage alleged in this case had been done prior to the sale of the property to the assignees, the only possible basis for recovery by the assignees was the assignment of the claim for damages which they had received from their vendors.

⁷ The trial court in its opinion overruling the Government's motion to dismiss stated that judgment would be entered solely in favor of the assignors (R. 19). However, the judgment was finally entered solely in the names of the assignees (R. 28).

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ecute the claims, had filed disclaimers after they had been made unwilling plaintiffs. Thus, the position taken by the majority of the court below was that the Anti-Assignment Act is simply a procedural limitation upon the method of collecting assigned claims. As we have pointed out, the statute expressly provides to the contrary. Instead of indicating that assignments of claims against the United States are merely voidable, it expressly states that attempted assignments "shall be absolutely null and void" unless made in accordance with its terms. We submit that the unequivocal language of the statute, supported by the consistent pronouncements of this Court throughout the statute's existence (see *supra*, pp. 5-6), removes all controversy that the statute is one of substance which wholly invalidates all voluntary assignments falling within its prohibitory purview. In these circumstances, its command may not be evaded by the simple expedient of making the assignor an unwilling party to the suit and then relying on his disclaimer to vest the assignee with the right to take judgment in his own name. In other words, if an assignment which comes within the prohibition of the statute is void, it is axiomatic that it is wholly void.⁸

⁸ As this Court stated in *Spofford v. Kirk*, 97 U. S. 484, 490, "We cannot say, when the statute declares all transfers and assignments of the whole of a claim, or any part or interest therein, and all orders, powers of attorney, or other authority for receiving payment of the claim, or any part thereof, shall be absolutely null and void, that they are only partially null and void * * *"

It will be observed, as Judge Soper pointed out in his dissenting opinion, that the court below and other lower courts have previously treated the statute as one of substance which renders assignments void, and not merely as a procedural limitation that may be overcome by the joinder of the assignor as an unwilling plaintiff. That is, if the assignment is one which the statute declares to be void, the mere fact that the assignor is a party to the suit does not authorize recovery by the assignee. See, *e.g.*, *23 Tracts of Land, Etc. v. United States*, 177 F. 2d 967, 970 (C.A. 6); *United States v. South Carolina State Highway Dept.*, 171 F. 2d 893, 899 (C.A. 4); *Greenville Sav. Bank v. Lawrence*, 76 Fed. 545, 546 (C.A. 4); *H. M. O. Lumber Co., et al. v. United States*, 40 F. 2d 544 (W.D. Mich.). See also *Coates v. United States*, 53 Fed. 989 (C. A. 4); *Bolivar Cotton Oil Co. v. United States*, 95 C. Cls. 182, 186-187; *Smith v. United States*, 96 C. Cls. 326, 342; *Hitchcock v. United States*, 27 C. Cls. 185, affirmed *sub nom. Prairie State Bank v. United States*, 164 U. S. 227.

3. Under the holding of the court below, the various purposes of the Anti-Assignment Act will be defeated. While the principal purpose of the Act was to prevent influential persons from buying claims against the Government and urging them improperly upon officials, this Court and lower Federal courts have held that the Act embodies several other purposes. Among these are

the following: "to make unnecessary the investigation of alleged assignments, and to enable the Government to deal only with the original claimant" (*United States v. Aetna Surety Co.*, 338 U. S. 366, 373); "that the government might not be harassed by multiplying the number of persons with whom it had to deal, and might always know with whom it was dealing until the contract was completed and a settlement made" (*Hobbs v. McLean*, 117 U. S. 567, 576; cf. *Goodman v. Niblack*, 102 U. S. 556, 560); "to protect the Government from traffic in claims against it" (*Sherwood v. United States*, 112 F. 2d 587, 592 (C.A. 2), reversed on other grounds, 312 U. S. 584). It is clear that these purposes, long declared by this and other courts, are largely defeated by the majority holding in the instant case. Thus, an investigation of the alleged assignment has been necessary. The Government has not been able to deal only with the original claimant. The number of persons with whom the Government has to deal has been multiplied. There has been traffic in a claim against the United States.* As Judge Soper pertinently said in his dissent (R. 48):

The unescapable and controlling fact is that the suits are based on assignments and if it is

* Though Congress by enacting the statute sought to prevent the buying of such claims against the United States, respondent Samuel M. Shannon testified on cross-examination that he understood that he was "buying a claim against the Government" (R. 13), and it is, at least, doubtful whether the assignors would have ever asserted the claim against the United States.

adjudged that they are tenable, the United States will be required to inquire into the relationship and transactions between the parties, and the very purpose of the Act will be defeated.

4. The majority opinion below is also based on the misconception that equitable principles are applicable and appropriate in the instant proceeding (R. 45). Neither is the case. It is well settled that the command of the Anti-Assignment Act cannot be avoided by the application of equitable principles. See *United States v. Gillis*, 95 U.S. 407, 413-414;¹⁰ *Spofford v. Kirk*, 97 U.S. 484, 489; *National Bank of Commerce v. Downie*, 218 U.S. 345, 354; *Hitchcock v. United States*, 27 C. Cls. 185, 206-208, affirmed *sub nom. Prairie State Bank v. United States*, 164 U.S. 227.

Moreover, "Any ordinarily prudent person in purchasing property takes into consideration its condition at the time of the purchase. It is reasonable to assume that plaintiff did so." *Smith v. United States*, 96 C. Cls. 326, 342. In the instant case, it affirmatively appears that respondents took into consideration the condition of the property at the time of the purchase. On cross-examination, in response to the question "At the time you acquired the place, you knew all of these damages had been done," Mr. Shannon answered "Sure" (R. 12);

¹⁰ The ground upon which the majority below believed that this case was "manifestly not controlling here" (R. 44) does not appear.

and, as the dissenting judge observed (R. 49), "It is obvious that the Shannons got a bargain even if the assigned claims prove to be valueless." There was, therefore, no basis for granting equitable relief to the assignees, even if the granting of such relief had been permitted by the statute.

5. It is patent that the decision of the court below tends sharply toward destruction of the Anti-Assignment Act. Under that decision, an assignment of a claim, which, under the declaration of the statute, is null and void when the claim is presented to an administrative officer for payment, becomes valid as soon as the assignor has been made a party to a suit brought by the assignee against the United States and has waived his right to the claim. If a void assignment can be validated by this simple procedure, the provisions of the statute become nugatory. Furthermore, serious administrative difficulties are likely to arise. For, while the fiscal and accounting officers of the Government will be required to refuse to honor assignments of this type when presented to them, no matter how meritorious the claims may be, the assignees can readily have the assignments enforced in a court of law. In these respects, the rule of the decision below creates an anomalous situation which ought not to be allowed to prevail; that decision should be reviewed and corrected by this Court.

CONCLUSION

For the foregoing reasons, it is submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

PHILIP B. PERLMAN,
Solicitor General.

MAY, 1951.